Can You Claim from the Road Accident Fund if a Passenger Causes a Car Accident?

A recent judgment by the Western Cape High Court considered an unusual but important legal question: **Can a passenger be regarded as the "driver" of a vehicle for purposes of a claim against the Road Accident Fund (RAF)?**

Surprisingly, the court found that the answer can be **yes**.

What Happened?

On 4 March 2019, the plaintiff was driving along Old Kulbaskraal Road near Malmesbury with her boyfriend seated in the front passenger seat. The vehicle was travelling at about 60 km/h and the driving conditions were clear.

The passenger became agitated because he believed they were going to be late for an examination. Without warning, he suddenly pulled up the handbrake while the vehicle was moving.

The vehicle immediately lost control and overturned.

The driver sustained serious injuries, including injuries to her spine, limbs and face. Tragically, the passenger died at the scene.

The injured driver then lodged a claim against the Road Accident Fund (RAF).

Why the RAF Rejected the Claim

The RAF argued that it was not liable for the plaintiff's injuries.

Their argument was based on section 17(1) of the Road Accident Fund Act, which provides compensation where injuries are caused by the negligence of the driver or owner of a motor vehicle.

According to the RAF, the person who caused the accident was a passenger, not a driver. They therefore argued that the Act did not apply.

This meant the court had to decide an unusual legal question:

Does a passenger who interferes with the controls of a vehicle become a "driver" for purposes of the RAF Act?

What the Court Found

The plaintiff's evidence was uncontested because the RAF did not present any evidence of its own.

The court accepted the plaintiff's version and found that:

- The passenger acted negligently by pulling the handbrake while the vehicle was moving.
- The plaintiff could not reasonably have prevented the accident.
- The accident was caused entirely by the passenger's actions.

What Counts as "Driving"?

The court then examined previous case law to determine the meaning of "driver" and "driving".

The key principle identified by the court was control of the vehicle.

The judge explained that driving does not only mean sitting behind the steering wheel. It also includes manipulating the controls of a vehicle in a way that affects its movement.

In this case, pulling the handbrake while the vehicle was travelling caused the passenger to effectively take control of the vehicle, even though he was not seated in the driver's position.

The court noted that there is no real difference between:

- grabbing the steering wheel, and
- pulling the handbrake

if the action interferes with the driver's control of the vehicle.

The court also referred to a Canadian case in which a passenger who grabbed a steering wheel was held to be "driving" for the brief moment during which he

assumed control.

The RAF's Argument Rejected

The court rejected the RAF's argument that it can never be liable for the actions of a passenger.

The judge pointed out that such an interpretation could leave innocent victims — including drivers and pedestrians — without any remedy where a passenger interferes with a vehicle and causes an accident.

However, the court also made it clear that not every careless act by a passenger will lead to RAF liability.

Liability will arise only where the passenger's actions amount to taking control of the vehicle itself.

The Court's Decision

The court held that by pulling the handbrake, the passenger assumed control of the vehicle and was therefore considered the "driver" for purposes of the RAF Act.

As a result, the Road Accident Fund was held liable for 100% of the plaintiff's proven or agreed damages.

Case Reference

Rondene Charnay Jantjies v Road Accident Fund
High Court of South Africa (Western Cape Division)
Case No: 14489/21
Judgment delivered: 27 February 2026

Susan de Wet

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